IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.948 of 2007.

Date of decision: 6th November, 2007.

Ashok Kumar ....Petitioner

-Versus-

State of H.P. and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? yes

For the Petitioner: M/s. J.L. Bhardwaj & Naresh Kaul, Advocates.

For Respondents: Mr.R.M. Bisht, Dy.A.G. for respondents 1 to 3.
Mr.Ajay Sharma, counsel for respondent-4.

Deepak Gupta, J.*(Oral)*

This writ petition is directed against the order of the Deputy Commissioner, Kangra passed on 7.5.2007 whereby he has upheld the order dated 25.9.2006 passed by the Authorized Officer (Sub Divisional Officer), Dehra setting aside the election of the present petitioner as Pradhan, Gram Panchayat, Naushera in Tehsil Dehra.

Brief facts of the case are that the petitioner herein was elected as Pradhan, Gram Panchayat, Naushera in the elections which were held in December, 2005. Respondent No.4 herein filed an election petition under Section 163 of the H.P. Panchayati Raj Act

(hereinafter referred to as the Act) challenging the election of the present petitioner.

The main ground of challenge was that the petitioner was an encroacher upon the Government land and had in fact applied for regularization of the encroachment in his favour in the year 2002 and as such was not qualified to contest the election under Section 175(i)(a) of the Act.

The petition was contested by the present petitioner who denied the allegations made in the election petition and stated that he had not encroached upon any Government land nor any application for regularization of the encroachment on Government land had been submitted by him. The learned authorized officer did not frame any issues nor gave an opportunity to the parties to lead evidence but straightaway heard arguments and decided the matter. He held that the petitioner herein had applied for regularization of encroachment of Government land in the year 2002 and therefore was not eligible to contest the elections. The Authorized Officer in his order has held that the signature on the application and its verification are of the petitioner which can easily be compared with the signature of the reply and therefore the denial by the petitioner cannot be accepted.

We are not going into the merits of the case since in our opinion the Authorized Officer has acted in a manner totally unbecoming of an officer exercising judicial functions and his order is liable to be set-aside only on the ground that he has not given adequate opportunity to the parties to put forth their case.

Section 167 of the Act reads as follows:

> "167.**Procedure before the authorized officer.-**(1) Subject to the provisions of this Act and of any rules made thereunder every election petition shall be decided by the authorised officer as expeditiously as possible and ordinarily within a period of six months from the date of its presentation under section 163 in accordance with the procedure applicable under the code of Civil Procedure, 1908 to the trial of suits:
> Provided that the authorised officer shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if he is of the opinion that their evidence is not material for the decision of the petition or that the party tendering such witness or witnesses in doing so on frivolous grounds or with a view to delay the proceedings.
> (2)The provisions of the Indian Evidence Act, 1872 shall, subject to the provisions of this Act, be deemed to apply in all respect to the trial of an election petition."

This section makes it clear that the Authorized Officer is required to follow the procedure laid down in the Civil Procedure Code. This obviously envisages that if the allegations made in the petition are controverted and are not admitted than issues will have to be framed in terms of Order 14 CPC. Thereafter, parties have to be given an opportunity to lead evidence, arguments heard and the matter decided.

From the perusal of the zimini orders, it appears that the Authorised Officer followed a novel procedure while deciding the present matter. Instead of framing issues he fixed the case for arguments. He did not record the evidence and took upon himself to onus of proving the allegation allegedly made by the election

petitioner. He apparently forgot that he was the Judge who was to adjudicate upon the matter and assumed the role of a party. He was either totally ignorant of the requirements of law or for reasons best known to him chose not to follow the established and settled legal procedure whereby he was expected to frame issues, permit the parties to lead evidence and then after hearing the arguments decide the matter.

As stated above the petitioner has denied that he had encroached upon the Government land and has also denied that he has moved any application for regularization. The case of the respondent No.4 had to be proved by leading evidence before the Authorized Officer that in fact the petitioner had moved such an application. There were various methods of proving the same which we need not elaborate. However, we are absolutely clear that the Court itself could not have taken upon itself the task of accepting this document without first permitting the parties to lead evidence.

This case again highlights the imperative necessity of giving proper judicial training to bureaucrats who are expected to discharge judicial and quasi judicial procedure. We have been repeatedly observing that the Administrative Officers entrusted with judicial functions forget the rules of Natural Justice and totally ignore the provisions of law which they are required to administer.

Unfortunately in this case the Deputy Commissioner also has upheld the order of the Authorized Officer in a very cursory manner. He has brushed aside the arguments raised on behalf of the present

petitioner. We are purposely not going into the merits of the case because we do not want to influence the decision thereon. Whether the present petitioner is an encroacher or not has to be proved by leading proper evidence before the Authorized Officer? In this case, as observed above, no such evidence has been led till date. The application allegedly filed by the petitioner for regularization of encroachment on Government land has not been proved. Even thereafter it is for the Authorized Officer to decide what is the effect of moving such application.

An objection has been raised by Sh.Ajay Sharma that the order in question has been passed in two connected cases and appeal has been filed in only one case and therefore the order in the other case had attained finality. To some extent Sh.Ajay Sharma is right. The zimini order dated 31.8.2006 shows that two petitions were clubbed together for hearing. However neither the names of the cases nor the details thereof have been given. Even the order in question has only been passed in one case and we are unable to find out from this order whether it was passed in any other case and if so in what case. In any case, since the order is wholly illegal we set-aside the same even if it affects the other case.

In view of the above discussion, we set-aside the orders dated 25-9-2006 and 7.5.2007 passed by both the Courts below. We remand the case to the Authorised Officer. We direct the petitioner and respondent No.4 to appear before the Authorised Officer on 4th December, 2007. The Authorised Officer on the said date shall

frame issues and thereafter hear the matter as expeditiously as possible and if necessary on day to day basis. He shall give adequate opportunities to the parties to lead evidence and after hearing the arguments shall dispose of the matter latest by 31st January, 2008.

A copy of this judgment be sent to the Chief Secretary to the Government of Himachal Pradesh who shall ensure that the same is placed on the service record of the concerned Authorised Officer and appropriate action is taken against him.

(Deepak Gupta),
Judge

November 6, 2007.
PV

(V.K. Ahuja),
Judge